



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/148522

PRELIMINARY RECITALS

Pursuant to a petition filed April 05, 2013, under Wis. Admin. Code §HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to FoodShare benefits (FS), a hearing was held on May 14, 2013, at Waukesha, Wisconsin.

The issue for determination is whether the agency correctly terminated petitioner's FS effective April 1, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Lynnae Boyenga, ESS
Waukesha County Health and Human Services
500 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. Petitioner was with his family in Florida and used his FS there from December 16, 2012 to April 11, 2013.

3. Because it had received information that petitioner was using his FS outside of Wisconsin, the agency sent a request for verification of petitioner's residence on January 25, 2013.
4. When petitioner's mother, his authorized representative, contacted the agency in response to that request, she confirmed that petitioner had come to Florida with them because he is disabled and needed to be with them due to his medical needs. She testified that his diagnoses include schizophrenia and leukemia, that he does not drive, that he needs their assistance in getting to his medical appointments, and that he was with them in Florida for 3-4 months.
5. On March 18, 2013 the agency issued a notice of decision to petitioner stating that effective April 1, 2013 his FS would end.

DISCUSSION

Applicants for FoodShare benefits must reside in, or be temporarily absent from Wisconsin. 7 CFR §273.3; *FS Handbook* §3.2.1, available online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>. In this case, the agency received an alert that petitioner was using his FS outside of Wisconsin for more than 30 days. Thus, the agency requested verification from petitioner of his address/residence. When petitioner's mother, who is his authorized representative, contacted the agency in response to that request, she confirmed that petitioner had come to Florida with them because he is disabled and needed to be with them due to his medical needs. She testified that his diagnoses include schizophrenia and leukemia, that he does not drive, that he needs their assistance in getting to his medical appointments, and that he was with them in Florida for 3-4 months. The agency had verification that petitioner indeed used his FS outside of Wisconsin between December 16, 2012-April 11, 2013.

The agency applied the FS temporary absence policy to petitioner's case. It provides that the agency should:

Include in the household an individual temporarily absent from the household when the expected absence is no longer than 2 full consecutive calendar months past the month of departure. Some examples are absence due to illness or hospitalization, employment, and visits.

To be considered temporarily absent, one must meet ALL of the following conditions:

1. The individual must have resided with the food unit immediately before the absence,
2. The individual intends to return to the home, and the food unit must maintain the home for him/her,
3. If the absent person is a child, the caregiver of the absent child is responsible for the child's care and control when the child returns to the home, and
4. If the absent person is an adult, the adult must still be responsible for care and control of the child during their absence.

Attending school - Persons temporarily absent to attend a school is not a reason to remain included in the food unit.

Hospitalized Newborn - Infants who remain hospitalized for an extended period of time should be added to the food unit, even if the absence is greater than 2 consecutive months.

Example 5: [REDACTED] resides with and receives FS with her mother. On June 6th, it is reported that [REDACTED] is going to stay with her father in Madison for the summer. She'll be returning to her mother's home on August 15th.

The month of departure is June. Since she is only absent for 1 calendar month (July), she is considered temporarily absent from her mother's household. She will not be out of the home longer than 2 full consecutive months.

Example 6: Her mother reports [REDACTED] will be leaving on May 24 to spend the summer with her father. She is expected to return to her mother's residence on August, 1st. [REDACTED] will be absent from her mother's home for 2 consecutive calendar months (June and July) so would not be considered temporarily absent. She should be removed from her mother's household effective July and added back to the household when she returns.

FS Handbook §3.2.1.2.

Under this policy and set of facts, petitioner does not qualify for the temporary absence policy, and no exceptions are present. I must uphold the agency's action here. And, while petitioner may find this decision unfair, it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The agency correctly terminated petitioner's FS effective April 1, 2013 because he was residing outside of the State of Wisconsin and did not meet the temporary absence policy.

THEREFORE, it is

ORDERED

That the petition for review herein is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

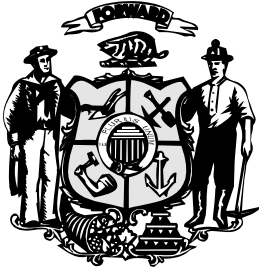
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 17th day of May, 2013

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on May 17, 2013.

Waukesha County Health and Human Services
Division of Health Care Access and Accountability